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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/733,519

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Johnny D. Long

8933

7590

08/02/2004

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EXAMINER

NGUYEN, TRAN N

ART UNIT

PAPER NUMBER

2834

DATE MAILED: 08/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/733,519

Applicant(s)

LONG, JOHNNY D.

Examiner

Tran N. Nguyen

Art Unit

2834

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) 1-12 and 14-30 is/are rejected.
- 7) ☐ Claim(s) 13 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Objections

Claims 11-12, 18, 23, 24 are objected to under 37 CFR 1.75(c) as being in improper form because they are multiple dependent claims. See MPEP § 608.01(n). Accordingly, **claims 11-12, 18, 23, 24 not been further treated on the merits, and consequently claims 19-22 which individually depend from the improper multiple dependent claim 18 not been treated on the merit.**

Note: Each of the above claims should depend from *only one* of the listed preceding claims, e.g. *for claim 11 the recitation should be the device of any one of claims 1-10.*

Claim Rejections - 35 USC § 112

1. **Claims 1-30** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Among claims 1-30, the term “whereby” has been hold that the functional “whereby” statement does not define any structure and accordingly cannot serve to distinguish. *In re Mason, 114 USPQ 127, 44 CCPA 937 (1957).*

In claim 2, “sufficient width and length” is a relative term, which renders the claim indefinite. The term “sufficient” is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

In claim 9, “rotor support means including a shaft that does not extends beyond the stator coil, having means for support and pivotal movement of the rotor”, and

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In claim 10, “rotor support means including a shaft that extends beyond the stator coil, having means for support and pivotal movement of the rotor”

Both claims 9-10 are indefinite because it is unclear whether the rotor support means further having means for support and pivotal movement of the rotor or the shaft that has having means for support and pivotal movement of the rotor ?

Furthermore, the phrase “for support and pivotal movement of the rotor” is indefinite because it is unclear that the so-called “means” supports the rotor while pivotally move the rotor or the “means” support the pivotal movement of the rotor? In light of the spec, the above recitation is understood as “shaft is extended beyond the stator coil and having support for rotor movement”

claims 11-12, 18, 23, 24 are indefinite because of improper dependencies from multiple claims, therefore, these claims have not been further treated on the merits, and consequently claims 19-22 which individually depend from the improper multiple dependent claim 18 not been treated on the merit.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 1-3, 10, 14-17** are rejected under 35 U.S.C. 102(b) as being fully anticipated by **Yabe (JP –7-308056)**.

Yabe discloses a dynamoelectric device (fig 1) comprising:

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a permanent magnet rotor (1) of ellipsoid shape having at least one N and S pole faces along the surface area of the shape, having stable and substantially uniform magnetic flux along the surface area;

a stator (2) having means whereby the rotor is supported for movement about an axis; and at least one coil of electrically conductive material axially centered with the rotor, said means for support of the rotor for movement about is contoured housing (8) of sufficient width and length to contain the rotor, and there is an air gap therebetween; and wherein the shaft is extended beyond the stator coil and having support for rotor movement, and

control (5) acts as means to accelerating the rotor and the stator, and

the worm gear wheel (3-4) for counter-rotating the rotor and the stator via motor (7).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 4-9, 25-30** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Yabe**, as applied in the rejection against the base claim(s), and in view of **Nagai** (JP 5-7199439).

Yabe substantially discloses the claimed invention, except for the added limitations of the air gap containing viscous substance, particularly ferromagnetic fluid or, in other words, ferrous material is provided for directing the path of the magnetic flux.

Nagai, however, teaches a dynamoelectric devices that employs the ferromagnetic fluid (12) in the air gap (10) between the rotor and the stator for the purpose of increasing magnetic flux density thereof to improve efficiency of the device. Furthermore, magnetic fluid filled the gap between the rotor and the stator is well known in the art (see cited refs for evidence) because it is not only improve the magnetic flux thereof but also provide means to reduce vibration and mechanical protection thereof.

Thus, it would have been obvious to one skilled in the art at the time the invention was made to modify the device by providing the air gap with viscous substance, particularly ferromagnetic fluid, as taught by Nagai. Doing so would provide means for directing the path of the magnetic flux in order to increase magnetic flux density thereof to improve efficiency of the device.

Regarding the recitations of the viscous substance is a pneumatic pressure, or hydraulic pressure or magnetic pressure, as in claims 6-8, it would have been obvious to one having ordinary skill in the art at the time the invention was made to select a suitable viscous substance, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Regarding the shaft being not to extend beyond the stator coil, as in claim 9, instead of extending outside the stator coil, as in Yabe's device, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the size of the shaft, i.e., the length of the shaft, for suitable accommodating within the housing of the device. Doing so require only skills in the art to change in size or shape, which is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955) (emphasis added).

Regarding the recitations of claims 26-30, "apparatus claims must be structurally distinguishable from the prior art." MPEP 2114. *In Re Danly*, 263 F. 2d 844, 847, 120 USPQ 528, 531 (CCPA 1959) it was held that apparatus claims must be distinguished from prior art in terms of structure rather than function. *In Hewlett-packard Co. vs Bausch & Lomb Inc.*, 909 F.2d

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1464, 1469, 15 USPQZd 1525, 1528 (Fed. Cir. 1990, the court held that "Apparatus claims cover what a device is, not what it does" (emphases in original). To emphasize the point further, the court added: "An invention need not operate differently than the prior art to be patentable, but need only be different" (emphases in original).

Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to apply the device in use for various apparatus. Doing so would require only ordinary skills in the art.

Allowable Subject Matter

Claim 13 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

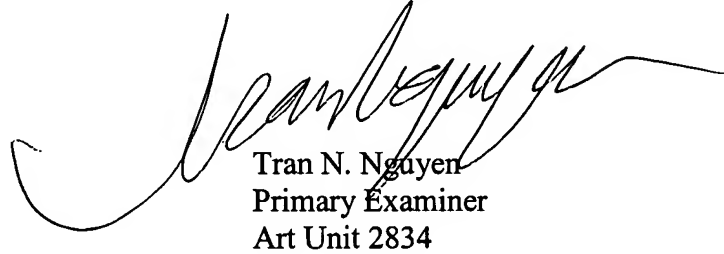
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tran N. Nguyen whose telephone number is (571) 272-2030. The examiner can normally be reached on M-F 7:00AM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Darren Schuberg can be reached on (571)-272-2044. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tran N. Nguyen
Primary Examiner
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